AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. (C) No. 1010 of 2007

Petitioner	Sharik Ahmad (Advocate) S/o Mohmmad Gani, aged about 40 years, R/o near Gokul Bhawan, Steel City Bhilai, Tah. & Distt. Durg (C.G.)
Versus	
Respondent	Sundar Lal, S/o Sarik Ahmad, Aged about 4 years, Through minor Guardian Mother – Smt. Kiran Bai Mahar, R/o Risalibhatha Bhilai, P/s Newai, Tah. & Distt. Durg (C.G.).

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Shri Vipin Tiwari, Advocate for the petitioner.

ORDER

(Passed on this 12th day of March, 2007)

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner seeks to challenge the impugned order dated 12.6.2002 passed by the Presiding Officer, Family Court, Durg, in M.J.C. No. 277/2006 (Sunder Lal Vs. Sharik Ahmad), whereby the application filed by the respondent for direction to the petitioner to undergo D.N.A. test, has been allowed by the Court below.
2. The brief facts, in nutshell, are that the respondent (minor) has filed an application under Section 125 of the Code of Criminal Procedure for maintenance to be granted from the petitioner on the ground of being son born from him and Smt. Kiran Bai. The petitioner allured Smt. Kiran Bai, a widow, on the promise that he would marry her and developed physical relations. As a result, within the said relationship between the petitioner and said Smt. Kiran Bai, the respondent (minor) was born on 7.8.2002.
3. The petitioner denied the relationship of being father of the respondent. In order to establish that the respondent(minor) is born out of the physical relations of Smt. Kiran Bai and the petitioner, the application dated 10.11.2006 was filed for a direction to the petitioner to undergo D.N.A. test.

4. Learned Court below, having considered all the facts and circumstances of the case allowed the application filed by the respondent (minor) and directed the respondent to furnish a bank draft in a sum of Rs. 16,530/-, in favour of Director, C.D.F.D., Haydrabad, towards charges of D.N.A. test of the petitioner.

5. Being aggrieved the petitioner has filed this petition on the ground that the D.N.A. test should not be ordered in a routine course. Before directing for D.N.A. test of the petitioner, learned Court below ought to have directed the respondent to establish his case by cogent evidence. In support of his case, learned counsel for the petitioner cited a decision of Hon'ble Supreme Court in the case of **Amrit Singh v. State of Punjab** (AIR 2007 SC 132) and submits that the petitioner cannot be forced to undergo D.N.A. test to create evidence against himself. The petitioner cannot be made a witness against himself, against his will in view of the provisions of Article 20(3) of the Constitution of India which provides that no person, accused of any offence, shall be compelled to be a witness against himself.

6. The direction in the present case to the petitioner to undergo D.N.A. Test is with the purpose to establish the fact that the respondent is born out of the petitioner's physical relations with the mother of the respondent. The direction issued by the learned Court below is in a proceeding under Section 125 of the Code of Criminal Procedure filed by the respondent(minor) for grant of monthly maintenance allowance from the petitioner. This direction is not in a criminal case where the petitioner is charged as an accused; therefore, he cannot plead the provisions of Article 20(3) of the Constitution of India.

7. It is well settled that merely because one of the parties has disputed the factum of paternity does not mean that the Court, without examining other evidences to prove or disprove the factum of paternity, straightway direct the D.N.A. test. The Court should first examine other evidences produced by the parties to establish the paternity of the child. Only in the case, the Court is

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unable or it is impossible to draw an inference or adverse inference on the basis of such an evidence and issue cannot be resolved without D.N.A. test, it may direct D.N.A. test and not otherwise. In other words, only in exceptional and rare cases where such test becomes indispensable to save the child from being stigmatized as a son of unknown father.

8. The Hon'ble Supreme Court in the matter of **Banarsi Dass Vs. Teeku Dutta (Mrs) and another** { (2005) 4 SCC 449}, wherein the question of law involved was whether a direction for deoxyribonucleic acid (DNA) test can be given in a proceeding for coming to a conclusion under the Succession Act, 1925, held that DNA test cannot be directed as a matter of routine and only in deserving cases such a direction can be given.

9. The paternity of the child can be proved from other evidences from the fact that both the persons were having physical relations, when Kiran Bai conceived and a child was born during that period, as a result of their relationship. This is for a person who is interested in denying the factum of physical relations and birth of a child during that period to rebut the allegation of the mother of the son. Applying the well settled principles of law, to the facts of the present case, it appears that the Court below has not examined the paternity on the basis of other evidences before directing DNA test.

10. Thus, this petition is partly allowed to the above extent. The matter is remitted back to the Family Court, Durg with a direction to decide the issue on the basis of other evidences before passing a direction for DNA test in M.J.C. No. 277/2006 (Sunder Lal Vs. Sharik Ahmad).

Consequently, M(W)P No. 643/2007 stands dismissed.

Sd/-
Satish K. Agnihotri
Judge

Thakur